IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 31715 of 2007(A)

PETITIONER:

SANU PRAKASH,
AJANTHA CHEMICALS, POONITHURA P.O., ERNAKULAM.

BY ADV. SRI.V.K.SUNIL

RESPONDENTS:
----

1. THE DEPUTY COMMISSIONER (APPEALS),
GENERAL SALES TAX, ERNAKULAM.

2. THE SALES TAX OFFICER,
1ST CIRCLE, TRIPUNITHURA.

3. THE DEPUTY TAHSILDAR (R.R.),
KANAYANNOOR TALUK OFFICE, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

==========

W.P.(C) NO. 31715 OF 2007 A

==========

Dated this the 25th day of October, 2007

J U D G M E N T

The challenge in this writ petition is against Ext.P10 order passed by the 1st respondent. By the aforesaid order, the application filed by the petitioner for condoning the delay of 210 days in filing the appeal against the assessment order for the year 2001-02 was rejected. It is stated in Ext.P10 order that though notice of posting of the case on 23/3/07, 30/3/07, 5/6/07 and 26/6/07 were given to the petitioner, he did not appear. Taking note of his absence on the aforesaid days and finding no merit in the contentions for condonation of delay, the application was rejected and consequentially appeal itself was also rejected by the 1st respondent.

2. Assailing Ext.P10 order of the 1st respondent, learned counsel for the writ petitioner submits that the petitioner did not receive any notice regarding the posting on 23/3/07. In so far as the notices of posting on 30/3/07 and 5/6/07 are concerned,

counsel refers to Ext.P8 and submits that by the said letter, the Appellate Authority was already informed that the notices posting the case to the said dates were received by him only on 03/04/07 and 6/6/07. It is also pointed out that though the case was posted on 26/6/07 with notice to him, since his mother passed away on that day, he could not either appear before the authority or make alternate arrangements. The counsel submits that the absence was not willful and therefore petitioner needs to be given yet another chance to persuade the authority to condone the delay.

3. I heard the learned Government pleader also in this matter.

4. If as a matter of fact, notice posting the case on 30/3/07 and 5/6/07 were received by the petitioner belatedly as stated by him in Ext.P8, his absence on those two days cannot be said to be deliberate. Similarly, it is his specific case that notice posting the case on 23/3/07 was not served on him. The absence on 26/6/07 is also justifiable on account of the bereavement in the family. Thus on the whole, the absence of the

petitioner cannot be concluded to be deliberate.

5. That apart, I also notice that Ext.P10 oder was passed by the 1st respondent only on 10/9/07. Having taken up the matter for orders on 26/6/07 and passed orders only on 10/9/07, the first respondent could have issued yet another notice to the appellant and give him a chance to appear before him. Even otherwise, Ext.P10 also shows that there has not been an independent consideration of the reasons stated by the petitioner justifying his prayer for condonation of delay. Thus on the whole, I am satisfied that Ext.P10 order of the 1st respondent cannot be sustained and I quash the said order.

Accordingly, quashing Ext.P10, I dispose of this writ petition directing that the 1st respondent shall reconsider Ext.P6 application filed by the petitioner for condoning the delay in filing Ext.P5 appeal, with notice to the petitioner and with an opportunity of hearing to him.

ANTONY DOMINIC, JUDGE.

Rp